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Federal Communications Commission

DA 93-1129

FCC MAIL SECTION

Before the  
Federal Communications Commission  
Washington, D.C. 20554

SEP 29 3 59 PM '93

MM Docket No. 93-18

DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations,  
(Coos Bay, Oregon)

RM-8173

**MEMORANDUM OPINION AND ORDER**  
(Proceeding Terminated)

Adopted: September 16, 1993; Released: September 29, 1993

By the Chief, Policy and Rules Division:

1. The Commission has before it the petition for reconsideration filed by Kenton Sturdevant ("petitioner") of the *Report and Order*, 8 FCC Rcd 4280 (1993), in this proceeding. The *Report and Order* allotted Channel 228A to Coos Bay, Oregon, as the community's third local FM service, in lieu of Channel 271A, as proposed in the *Notice of Proposed Rule Making*, 8 FCC Rcd 949 (1993).<sup>1</sup>

2. Channel 228A was allotted to Coos Bay to avoid a conflict with the pending application of Station KGAL-FM, Brownsville, Oregon, effectuating the upgrading of its facilities from Channel 272A to Channel 272C1. Petitioner argues that the Commission arbitrarily, and without affording him the opportunity to comment, allotted Channel 228A to Coos Bay in lieu of the originally proposed Channel 271A. Petitioner contends that Station KGAL-FM's application should not be an issue here since the station did not file any opposing comments during the rule making.

3. Petitioner states that he had identified Channel 228A as a possible allotment at the time he filed the petition. However, because the channel conflicted with Coos Bay translator Station K228CW and Eugene translator Station K229AB, he opted to propose Channel 271A instead. Station K228CW and Station K229AB are owned by the State of Oregon/State Board of Higher Education. Petitioner states that Station K228CW rebroadcasts the classical music programming of noncommercial Station KWAX-FM, Eugene, Oregon, and it is the only station providing such programming between Portland and Ashland. Station K229AB, according to petitioner, will extend Station KWAX-FM's noncommercial programming to the

Reedsport area. Thus, he contends that the allotment of Channel 228A to Coos Bay "facilitates the abandonment of service to a community and severely impacts or eliminates the continued and/or expanded noncommercial classical music service to Coos Bay and Reedsport, Oregon, affecting those populations of approximately 25,000 and 5,000 respectively." Finally, believing that Channel 271A would be allotted to Coos Bay, petitioner states that he researched programming options and intended to rebroadcast portions of Portland Station KINK-FM's programming having found it to be "a viable format consistent with the dial position of Channel 271 (102.1 Mhz) and the economics of a small market, start-up radio station."

4. After careful consideration of the petitioner's request, we will deny his petition for reconsideration. It is well established Commission policy that the Commission has the authority to allot a channel different from that specified in the *Notice of Proposed Rule Making* without giving prior public notice. See *Churubusco, Indiana, et al.*, 4 FCC Rcd 5045 (1989). Further, Paragraph 3(c) of the Appendix places petitioners on notice that a counterproposal may lead to the allotment of channels equivalent to those originally requested. The Commission can also allot a different channel of the same class on its own motion in a rule making proceeding in order to ensure the most efficient use of the spectrum. In this case, the Commission was able to allot a Class A channel to Coos Bay, as requested by the petitioner, and also accommodate the pending application of a full service station seeking to upgrade its facilities. Thus, the action taken in the *Report and Order* conforms to the Commission policy of accommodating pending applications of full service stations wherever possible. See *Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments (MO & O)* 8 FCC Rcd 4743 n.12 (1993). See, e.g., *Hardinsburg, Kentucky*, 7 FCC Rcd 1746 (1992) (when possible, we have modified a rule making proposal to specify an alternate site or channel to accommodate an application). Finally, while we recognize that the allotment of Channel 228A to Coos Bay may result in the displacement of Stations K228CW and K229AB, these stations are not full service noncommercial educational facilities, but rather secondary services, and, as such, are not entitled to interference protection. Section 73.512 of the Commission's rules, which governs the operation of Class D stations, states that these secondary services, which operate within the commercial band, may continue to operate only so long as no interference is caused to any TV or commercial FM broadcast station. If the Class D station does cause prohibited interference, it must stop operating when program tests for the full service station begin.<sup>2</sup>

5. Accordingly, IT IS ORDERED, That the petition for reconsideration filed by Kenton Sturdevant to allot Channel 271A in lieu of Channel 228A to Coos Bay, Oregon, IS DENIED.

<sup>1</sup> Comments in opposition were filed by C&C Broadcasting, Inc. ("C&C"), proposed assignee of Station KGAL-FM, Brownsville, Oregon. C&C's comments are untimely filed and were not accompanied by a request for their acceptance. The Commission's rules do not contemplate the filing of pleadings beyond the comment period unless specifically requested. Therefore, C&C's untimely filed comments will not be considered herein.

<sup>2</sup> Petitioner also raises an issue that Station KGAL-FM's application should not merit protection since it seeks to effectuate

its upgrade by moving its transmitter site 30 miles south of its community of license, thus giving at least the appearance of abandoning the smaller community of Brownsville in favor of serving the larger market of Eugene. Petitioner argues that there is no technical reason for such a move since Channel 272C1 can be used at Station KGAL-FM's existing transmitter site. Any arguments regarding the merits of Station KGAL-FM's application are not properly raised in the context of this proceeding and will not be reached herein.

6. IT IS FURTHER ORDERED. That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Douglas W. Webbink  
Chief, Policy and Rules Division  
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